Supreme Court, U.S.
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No. 98-72

In The

Supreme Court of the United States

October Term, 1997

STEPHEN M. LaFONTAINE,

Petitioner,

v.

THE STATE OF GEORGIA,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of Georgia

BRIEF IN OPPOSITION ON BEHALF OF RESPONDENT

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QUESTION PRESENTED

I.

Should this Court decline to grant certiorari to review a fact specific application of the settled precedent of this Court to the particular circumstances of Petitioner's case?

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BRIEF IN OPPOSITION ON BEHALF OF RESPONDENT

PART ONE

STATEMENT OF THE CASE

Petitioner, Stephen M. LaFontaine, was arrested in Forsyth County, Georgia, on October 22, 1996, for driving under the influence. Petitioner was represented at trial by attorney William C. Head. Petitioner was tried by the Court, sitting without a jury, and convicted of driving under the influence. Petitioner was sentenced to twelve months' probation and the payment of $1,225.00 in fines and fees, as well as a probation supervision fee of thirty dollars per month. Sentence was imposed March 26, 1997. Appendix, p. 13. Thus, it appears that the sentence has now expired.

Petitioner did not file a motion for new trial. On direct appeal, the Supreme Court of Georgia found the following facts:

> T. J. Jackson, a Georgia State Patrol trooper, testified that on the morning of October 22, 1996, he and a fellow officer conducted a roadblock on Old Atlanta Road in Forsyth County for the purpose of examining the driver's licenses and proof of insurance of all vehicles traveling on that roadway as well as to check for other violations of Georgia law. The decision to implement the roadblock was made by a State Patrol supervisor, although the determination as to the location of the roadblock was made by the field officers. Trooper Jackson testified that the determination as to the location of the roadblock is often based on factors such as a high number

> of complaints about traffic violations on a particular road. Without exception and pursuant to standard operating procedure, on the day in question the troopers checked the insurance and licenses of every driver that approached the roadblock. When LaFontaine arrived at the roadblock, Trooper Jackson detected a strong odor of alcohol and observed that LaFontaine's face was flushed and his eyes bloodshot. When questioned about his use of alcohol, LaFontaine informed the trooper that he had been drinking until about 4:00 a.m., but had not had anything to drink since that time. After failing field sobriety tests, LaFontaine was taken to a hospital for a blood test; the test yielded a blood-alcohol content of 0.11 grams and LaFontaine was issued a Uniform Traffic Citation.
>
> * * *
>
> The roadblock was established and implemented by supervisory personnel and although field troopers were given limited decision making authority where to place the roadblock, their discretion was clearly minimal.

LaFontaine v. State, 269 Ga. 251, 252-53, 497 S.E.2d 367 (1998).

The Supreme Court of Georgia affirmed Petitioner's convictions and sentence on direct appeal. *LaFontaine*, 269 Ga. at 254. That court denied Petitioner's motion for reconsideration on April 1, 1998.

Petitioner has now filed the instant petition seeking review of the decision of the Supreme Court of Georgia applying this Court's well-established precedent, set forth in *Michigan Dept. of State Police v. Sitz*, 496 U.S. 444

(1990), to the specific facts of Petitioner's case and concluding on those specific facts that Petitioner failed to demonstrate that the roadblock was unreasonable under the Fourth Amendment to the United States Constitution.

PART TWO

REASONS FOR NOT GRANTING THE WRIT

I. THIS COURT SHOULD DECLINE TO GRANT CERTIORARI TO REVIEW A FACT-SPECIFIC APPLICATION OF THE SETTLED PRECEDENT OF THIS COURT TO THE PARTICULAR CIRCUMSTANCES OF PETITIONER'S CASE.

This Court has repeatedly held that it will not exercise its certiorari jurisdiction merely to review a decision of a state court turning upon an analysis of the particular facts involved. *See, e.g., Ross v. Moffitt*, 417 U.S. 600, 94 S.Ct. 2437 (1974); *Texas v. Mead*, 465 U.S. 1041, 104 S.Ct. 1318 (1984); *United States v. Johnston*, 268 U.S. 220, 45 S.Ct. 496 (1924). Respondent submits that it is precisely this type of decision that Petitioner now asks this Court to grant certiorari to review.

The decision of the Supreme Court of Georgia that Petitioner asks this Court to review applied the clear legal precedent of this Court as contained in its decision in *Michigan Dept. of State Police v. Sitz*, 496 U.S. 444 (1990), to the specific facts of Petitioner's case. In reviewing the facts of Petitioner's case and Petitioner's claim of an unreasonable roadblock, the Supreme Court of Georgia set forth the applicable precedent to be applied to Petitioner's claim as follows:

In examining the propriety of roadblock stops, the issue for resolution is not whether there was probable cause to stop the vehicle, but whether the roadblock stop was otherwise implemented and conducted in a manner as to demonstrate that the stop of the vehicle was "reasonable" under the Fourth Amendment. *Michigan Dept. of State Police v. Sitz*, 496 U.S. 444, 450, 110 S.Ct. 2481, 2485, 110 L.Ed.2d 412 (1990). *See Christopher v. State*, 202 Ga. App. 40(1), 413 S.E.2d 236 (1991).

> "It has been held that police officials may set up highway roadblocks for the purpose of requiring motorists to display their driver's license, and that such a practice does not invade their right to use the public ways free from unreasonable and unwarranted interception. Nor does such a practice constitute an unlawful arrest or restraint or an illegal search contrary to the United States Constitution." [Cit.] "The [S]tate can practice preventive therapy by reasonable road checks to ascertain whether man and machine meet the legislative determination of fitness . . . ." [Cits.]

State v. Swift, 232 Ga. 535-536(1), 207 S.E.2d 459 (1974). Although a roadblock cannot be used as a subterfuge to detain citizens for the purpose of searching their automobiles, a momentary stop of a traveling citizen to perform the license checks or to check the present fitness of a car or driver for further driving is permissible. Id.; *Brisbane v. State*, 233 Ga. 339, 343-44, 211 S.E.2d 294 (1974). Roadblock stops have appreciably less intrusion on the part of travelers and do not create the fear and surprise engendered in

> motorists by roving patrol stops because the motorist is not singled out; the traveler is reassured when all vehicles are stopped. *Sitz*, supra at 452-453.

LaFontaine, 269 Ga. at 252-53.

In reviewing the specific facts of Petitioner's case and applying this Court's precedent set forth in *Sitz*, and adopted by the Supreme Court of Georgia, the Supreme Court held as follows:

> We conclude that under the circumstances of this case that the roadblock set up primarily as a means to perform routine traffic checks was valid. *State v. Golden*, 171 Ga. App. 27, 318 S.E.2d 693 (1984), articulates specific factors to determine when a roadblock was satisfactory. A roadblock is satisfactory where the decision to implement the roadblock was made by supervisory personnel rather than the officers in the field; all vehicles are stopped as opposed to random vehicle stops; the delay to motorists is minimal; the roadblock operation is well identified as a police checkpoint; and the "screening" officer's training and experience is sufficient to qualify him to make an initial determination as to which motorists should be given field tests for intoxication. Id. at 29-30. Applying *Golden* to the facts of this case it is clear that the roadblock was satisfactory. The roadblock was established and implemented by supervisory personnel and although field troopers were given limited decision making authority where to place the roadblock, their discretion was clearly minimal.
>
> We therefore conclude that the trial court properly denied LaFontaine's motion to suppress

> because there is no evidence of unfettered discretion by the field troopers and LaFontaine made no showing that the roadblock was arbitrary or oppressive to motorists. LaFontaine's arrest was not the result of a State trooper's whimsical decision to stop only his vehicle or an arbitrary scheme to single him out. See *Christopher,* supra at (1); *Mims v. State,* 201 Ga. App. 227(2), 410 S.E.2d 824 (1991). The stop was made within the constitutional confines of a routine motorist roadblock on Old Atlanta Road and LaFontaine's ensuing arrest was the result of his personal decision to operate a motor vehicle while in an intoxicated state.

Id., at 253.

Respondent submits that the Supreme Court of Georgia fully considered and correctly decided the issues now presented by Petitioner and that the decision of the Supreme Court of Georgia on the issue of the reasonableness of the roadcheck represents no departure from or expansion of this Court's clear guidance for determining such issues set forth in *Michigan Department of State Police v. Sitz,* but rather is merely an application of the legal principles set forth by this Court in that decision to the specific facts of Petitioner's case. Thus, this Court should decline to grant certiorari.

This Court should decline to exercise its certiorari jurisdiction in cases such as Petitioner's in which the petitioner simply asks this Court to review whether the lower court erroneously determined that the facts of his particular case failed to satisfy the test the reasonableness of a roadcheck set forth by this Court in *Michigan Department of State Police v. Sitz.* As this Court has instructed,

"This Court's review . . . is discretionary and depends on numerous factors other than the perceived correctness of the judgment we are asked to review." *Ross v. Moffitt*, 417 U.S. at 617. Thus, a claim such as Petitioner's that the Supreme Court of Georgia's decision was "erroneous" is insufficient to motivate the exercise of this Court's certiorari jurisdiction, particularly in light of the fact that, as Petitioner himself concedes, he is not asserting a challenge to the validity of roadblocks per se, but on the specific manner in which this single roadcheck was conducted in this case. Petition, p. 9.

Petitioner's case presents no question of paramount importance or widespread application, nor is it a case of first impression for this Court's review. Instead, Petitioner seeks to invoke the certiorari jurisdiction of this Court to review the mere application of this Court's settled legal precedent, set forth in *Michigan Dept. of State Police v. Sitz*, to the particular facts of Petitioner's case.

While Respondent maintains that the Supreme Court of Georgia correctly applied this Court's legal precedent to the facts of Petitioner's case in holding that Petitioner failed to establish that the roadcheck was unreasonable, this Court does not in any event operate simply to correct errors in fact-finding made by lower courts. As this Court stated in *United States v. Johnston*, 268 U.S. at 227, "We do not grant a certiorari to review evidence and to discuss specific facts." Under these circumstances, there is no legitimate basis warranting this Court's grant of certiorari in this matter.

Moreover, Respondent notes that the record reflects that Petitioner's sentence has expired. The expiration of

the sentence does not deprive this Court of jurisdiction. *See, e.g., Spencer v. Kemna,* ___ U.S. ___, 118 S.Ct. 978 (1998). However, this is a significant additional reason why the writ should not be granted.

Finally, Respondent shows that the arguments of Petitioner are in sharp contrast to the factual findings of the Supreme Court of Georgia. Petitioner claims that the troopers "had virtually no limits on their discretion." Petition, pp. 7-8. However, the Supreme Court expressly found that the discretion given the troopers was "minimal." *LaFontaine,* 269 Ga. at 253. Petitioner characterizes the road check as "designed to check for *all* violations of Georgia State law. . . . " Petition, p. 8 (emphasis in original). The Supreme Court found that the purpose of the roadcheck was to "examin[e] the driver's licenses and proof of insurance of all vehicles traveling on that roadway as well as to check for other violations of Georgia law." *LaFontaine,* 269 Ga. at 252. Petitioner characterizes the troopers' actions as "unfettered by . . . guidelines and supervisory control." Petition, p. 7. The Supreme Court found that the decision to implement the roadblock was made by a supervisor, and that the roadblock was conducted according to the State Patrol's standard operating procedure (Petitioner has not made this procedure a part of the appendix). *LaFontaine,* 269 Ga. at 252. Thus, the facts found by the Supreme Court of Georgia are vastly different from those argued by Petitioner.

Ultimately, Petitioner's arguments rely upon a misreading of this Court's decision in *Sitz. Sitz* affirmed the constitutionality of sobriety checkpoints. *Sitz,* 496 U.S. at 455. The Court concluded that the eradication of drunken driving is a state interest of great magnitude. *Id.,* at 451.

Contrary to Petitioner's arguments, nothing in *Sitz* even suggests that drunken driving is the sole legitimate State interest that may be advanced by a roadcheck; Michigan simply asserted no other purpose for those it conducted. The Court has also upheld checkpoints to detect illegal aliens. *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976). Indeed, *Brown v. Texas*, 443 U.S. 49, 50-51 (1979), specifically recognizes that there may be other state interests sufficient to justify a roadcheck.

Petitioner also characterizes *Sitz* as requiring the officers operating the roadcheck to keep records about the effectiveness of the roadblock. Petition, p. 9. While the Michigan officers did so, the Court applied those statistics in gauging the effectiveness of roadchecks generally. *Sitz*, 496 U.S. at 454-55. The Court did not even suggest that police must keep statistical records for a post hoc analysis of the effectiveness of each and every roadblock. To the extent other cases cited by Petitioner have adopted such a requirement, Respondent respectfully suggests that these cases misread this Court's holding in *Sitz*.

Although this Petition purports to be filed on behalf of Stephen LaFontaine, and to challenge the roadcheck as implemented in his individual case, counsel devote the majority of their argument to criticism of the decisions of Georgia's intermediate appellate court in other cases, specifically, *Mims v. State*, 201 Ga. App. 277, 410 S.E.2d 824 (1991) and *Christopher v. State*, 202 Ga. App. 40, 413 S.E.2d 236 (1991). As neither Mr. Mims nor Mr. Christopher is before this Court, nor are their cases, these arguments are of little weight. Petitioner apparently contends that *State v. Golden*, 171 Ga. App. 27, 318 S.E.2d 693 (1984)

establishes the correct standard for evaluating a roadcheck, notwithstanding the fact that it was decided prior to *Sitz*. Petition, p. 10. The five factors established by *Golden* were either clearly met by the troopers in the case at bar or are not asserted by Petitioner to have been deficient. Thus, the roadcheck met the *Golden* criteria.

Closely analyzed, it is apparent that Petitioner has asserted not a single claim of unreasonableness in the actual operation of the roadcheck by the troopers. Petitioner does not claim that the troopers arbitrarily singled him or any other driver for harassment or other improper behavior, nor does he contend that race, gender, or any other inappropriate criteria were considered. Rather, he contends that the fact that the individual troopers were delegated the authority to select the precise location of the roadblock, in and of itself, is sufficient to render the roadcheck unreasonable and thus unconstitutional (notably, Petitioner suggests nothing inappropriate about the site ultimately selected). Nothing in *Sitz* or this Court's other cases remotely suggests that a delegation of such minimal discretion to the officers on site is per se unreasonable, nor does Petitioner suggest why that might be so.

Because a legitimate state interest is involved (detecting unlicensed and uninsured drivers, as well as other violations of the law, including drunken drivers such as Petitioner), because a roadcheck is recognized as an effective method to detect these drivers, and because the level of intrusion on an individual is minimal, the roadcheck also met the *Sitz* standards. 496 U.S. at 454-55. Thus, the roadcheck was reasonable and thus constitutional.

CONCLUSION

WHEREFORE, for all the above and foregoing reasons, Respondent prays that this Court deny this petition for a writ of certiorari as Petitioner merely seeks review of a fact specific application of the settled legal precedent of this Court.

Respectfully submitted,

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